

CHAIRMAN LYNN M. BRAGG  
EXPLANATORY STATEMENT OF VIEWS ON ADEQUACY  
MELAMINE FROM JAPAN, INV. NO. AA1921-162 (REVIEW)  
NOVEMBER 5, 1998

Upon careful consideration of the various interested party responses to the Federal Register notice instituting this review investigation, I find that both domestic and foreign/importer interested parties have provided adequate responses. Accordingly, I determine that a full review investigation is warranted.

GENERAL VIEWS ON ADEQUACY

I note that there are no definitive quantitative or qualitative prerequisites for determining whether individual or group responses are adequate. Indeed, what is adequate in one review investigation may not be adequate in another. Similarly, one Commissioner's adequacy may be another's basis for determining that an expedited review investigation is appropriate. Individual Commissioners may find certain information more indicative of a party's or group's willingness to participate in a review investigation (see 19 U.S.C. § 1675(c)(2)(A)) than other information.

SPECIFIC ADEQUACY ISSUES IN THIS REVIEW INVESTIGATION

In this review investigation, one domestic producer, Melamine Chemicals, Inc. ("MCI"), accounting for approximately 37% of total domestic melamine production (50% of open market sales) in 1997, and one importer, Taiyo America, Inc. ("Taiyo"), accounting for approximately 100% of total imports of melamine from Japan in 1997, responded to the Commission's notice of institution.<sup>1</sup>

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<sup>1</sup> Although it did not bear on my adequacy finding, I do wish to briefly acknowledge what could prove to be a recurring phenomenon in these review investigations. That is, based on the available information, it is not entirely clear that industry participants have been sufficiently or correctly identified.

In addition to MCI, there is currently one other domestic producer of melamine, American Melamine Inc. ("AMI"). According to the response filed by MCI, AMI was formed in 1988 (about 12 years after the original investigation) and is a joint manufacturing venture of two Dutch companies: Cytec Industries B.V. and DSM N.V. An attachment to MCI's response, however, indicates that AMI is a joint venture of American Cyanamid (a domestic producer at the time of the original investigation) and DSM. (Response of MCI to Notice of Institution at Attachment B, (SRI International, Chemical Economics Handbook: Melamine (Jan. 1996) at 673.3000N. Note that MCI submitted this attachment for reasons unrelated to the composition of the U.S. industry. See MCI response at 12.) Taiyo, for its part, asserts that there are three domestic producers: MCI; Cytec (which Taiyo states is a business unit of American Cyanamid); and DSM Melamine, (assumedly the Dutch company).

I note that AMI is not on Commerce's "Interested Party" list for this review investigation.

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As noted above, there are no magical numerical standards by which to determine adequacy. In absolute terms, I find 37% of total production an adequate reflection of the domestic industry's willingness to participate in this review investigation.<sup>2</sup>

In its comments concerning Taiyo's response to the notice of institution, MCI asserted that the Commission should find the response inadequate: (i) because Taiyo did not also file an entry of appearance for the review investigation; and (ii) because Taiyo did not "certify" that its questionnaire responses were "accurate and complete to the best of its knowledge."

Upon review of the statute and the Commission's rules, I find that although the failure to enter an appearance may implicate some of Taiyo's participation rights, the failure is not relevant to whether the response itself is adequate. I am somewhat more troubled by Taiyo's failure to certify the information it submitted; however, I attribute this to the fact that Taiyo apparently executed and submitted the response without benefit of counsel.

For the foregoing reasons, I find that both MCI and Taiyo have provided adequate responses and, therefore, that a full review investigation is appropriate.

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<sup>1</sup> (...continued)

It is my understanding that Commerce prepares such lists for each sunset review, and that the list is a compilation of all parties on record which participated in the particular matter. I am not aware of whether Commerce contacts such interested parties in connection with its notice of initiation.

When parties respond to the notice of institution, Commission staff, as appropriate and necessary, contact such parties to advise them of deficiencies and provide assistance. Staff does not, however, contact or attempt to identify non-responding interested parties during the "adequacy phase" of a review investigation.

Accordingly, notwithstanding that Commerce's notice of initiation and the Commission's notice of institution were published in the Federal Register, it is possible that AMI would have no independent knowledge of this review investigation. I am not suggesting that notice in the Federal Register is not a legally sufficient vehicle for providing notice to AMI; I am suggesting, however, that according to my understanding of the procedures followed in these review investigations, it is more likely that MCI, a petitioner in the original investigation, would be independently aware of this review investigation than AMI, which did not then exist.

<sup>2</sup> Although I find 37% of total production to be adequate in this review investigation, in my view, it would also be appropriate to have based this finding on MCI's share of open market sales. Specifically, in original Title VII investigations, Commissioners may, in assessing whether unfair imports are causing material injury to a domestic industry, give heightened consideration to that portion of the industry's operations which is related to "open" or "merchant" market consumption. I frequently exercise this discretion.

By analogy, in evaluating domestic industry group response, I believe I have the discretion to base my adequacy finding, in part, on the share of open market consumption accounted for by those producers indicating a willingness to participate in the review investigation.